No.

In the Sup

OC

Unite

OCTOBER

MONTY I

Pet

STATE OF

Resp

On Writ of Certiorari to t
Of the Stat

MOTION FOR LEAVE TO
ON BEHALF OF NATI
AND DELINQUENCY,
OF THE NATIONAL L
ASSOCIATION, AND
ATRIC ASSOCIATION

ROB
CO
JAM
N
1
S
(

In the S

U

Oct

Mo

Sta

On Writ of Certiorar
Of the

MOTION FOR
AMICI CURIAE I

Pursuant to Rule 36
respectfully move for
Amici Curiae in suppo
C. Baker, counsel for
consent of David W. L

The National
(NCCD) is a no
rated in 1921 as
NCCD has ende
correctional and
groups, and to
of the criminal
them more respo
In conjunction
Judges, NCCD d
pects of the juv
NCCD presently
and officials.

The National
(NLADA) is a
pose is to assis
persons unable
great majority
United States,
counsel systems
vidual members-
Amicus Juvenile
NLADA which

The American
is an interdiscip
members, inclu
workers, educat

and treatment
ognized expert
hood and adole
cent anti-social

Amici are k
adolescent beh
perience with
tem, and the c
on children wh
tion. *Amici* bel
tinct from adu
the peculiar v
that a brief fo
status in our s
determination
dren are consi
tion against c
because of the
cation hearing
gue that certi
indicate that t
be treated as a

Counsel for
brief with cou
that *Amici*'s ar
to be presente
which *Amici* d

For t
that its
granted.

Dated

Of Coun
MARIL

On

BRIE
LIN
NA
ATI
ASS
PE

In

Th

Th

Co

Ex

Co

TABLE OF AUTHORITIES

Cases

Page

Bellotti v. Baird, 443 U.S. 622 (1979) 2, 3, 4, 5, 6
Breed v. Jones, 421 U.S. 519 (1975) 5
Coker v. Georgia, 433 U.S. 584 (1977) 20
Dorszynski v. United States, 418 U.S. 424 (1973) 12
Eddings v. State, 616 P.2d 1159 (Okl. Crim. App. 1980) 18
Furman v. Georgia, 408 U.S. 238 (1972) 2, 7, 22
Gallegos v. Colorado, 370 U.S. 49 (1962) 6, 7
Ginsberg v. New York, 390 U.S. 629 (1968) 4
Gregg v. Georgia, 428 U.S. 153 (1976) 1, 4
Haley v. Ohio, 332 U.S. 596 (1948) 6, 12
H. L. v. Matheson, 49 U.S.L.W. 4255 (March 23, 1981) 4, 6
In re Gault, 387 U.S. 1 (1967) 3, 5, 11
In re Winship, 397 U.S. 358 (1970) 5
Lockett v. Ohio, 438 U.S. 586 (1978) 2
Matter of M.E., 584 P.2d 1340 (Okl. Crim. App. 1978) 18
Matter of Sanders, 564 P.2d 273 (Okl. Crim. App. 1977) 17
Matter of Smith, 548 P.2d 647 (Okl. Crim. App. 1976) 17
May v. Anderson, 345 U.S. 528 (1953) 2
McKeiver v. Pennsylvania, 403 U.S. 528 (1971) 4, 11, 12, 19
Michael M. v. Super. Ct. of Sonoma County, 49 U.S.L.W. 4273 (March 24, 1981) 3
Parham v. J.R., 442 U.S. 584 (1979) 3
Planned Parenthood of Missouri v. Danforth, 428 U.S. 52 (1976) 3, 5
Prince v. Commonwealth of Massachusetts, 321 U.S. 158 (1944) 4

Table of Authorities

Cases

	Page
Sherfield v. State, 511 P.2d 598 (Okl. Crim. App. 1973)	16
Trop v. Dulles, 356 U.S. 86 (1958)	23
U.S. v. Darby, 312 U.S. 100 (1941)	4
Woodson v. North Carolina, 428 U.S. 280 (1976)	2, 7

Statutes and Constitutions

Cal. Pen. C. § 190.5	21
37 Ill. Ann. Stats. § 702.7	14
38 Ill. Ann. Stats. § 9-1(b)	21
Ind. Code § 31-6-2-4(b)(c)(d)	14
Miss. Code 1972 Ann. § 43-21-157	14
Nev. Rev. Stats. § 176.025	21
N.H. Rev. Stats. Ann. 1974 630:1(v)	21
N. Mex. Stats. 1978 Ann. Ch. 31 Art. 18-14 (1980 Cum. Supp.)	21
N.Y. Pen. Law § 30.00	14
N.Y. Pen. Law § 125-27b	21
Oklahoma Constitution, Art. 3, § 1	14
10 Okl. Stat. Supp. 1976 § 1112(b)	15, 16
10 Okl. Stat. Supp. 1977 § 1102(A)	16
15 Okl. Stat. Ann. §§ 19, 20	14
21 Okl. Stat. Ann. § 1215	14
43 Okl. Stat. Ann. § 3	14
63 Okl. Stat. Ann. § 2512	14
63 Okl. Stat. Ann. § 2602	14
Tenn. Code Ann. § 37-234	21
Tenn. Code Ann. § 39-2404(i)(1)	21

TABLE OF AUTHORITIES

STATUTES AND CONSTITUTIONS

P

Federal Youth Corrections Act (18 U.S.C. § 5010 et seq.) .....
United States Constitution, First Amendment .....
United States Constitution, Eighth Amendment .....

Other Authorities

ALI, Model Penal Code § 210.6 (1980) .....
Amnesty International Report, The Death Penalty (1979) .....
Bowers, Executions in America (1974) .....
Erickson, Childhood and Society (2d Ed. 1963) .....
Fed. Bureau of Investigations, U.S. Dept. of Justice, Crime in the United States: 1978 (1979) .....
Fox, Juvenile Justice Reform: An Historical Perspective, 22 Stanford L. Rev. (1970) .....
Gaspar and Katkin, A Rationale for the Abolition of the Juvenile Court's Power to Waive Jurisdiction, 7 Pepperdine L.Rev. 937 (1980) .....
Higdon, The Crime of the Century: The Leopold and Loeb Case (1975) .....
Kohlberg, "Development of Moral Character and Moral Ideology," in Hoffman and Hoffman, Review of Child Development Research (1964) .....
Laurence, A History of Capital Punishment (1960) ....
Lewis, A Comparison of Minors' and Adults' Pregnancy Decisions, Vol. 50, No. 3 Amer.J. of Orthopsychiatry (1980) .....
Mack, The Juvenile Court, 23 Harv.L.Rev. 104 (1909)
National Commission on Reform of the Criminal Law, Study Draft of the New Federal Code, § 3603 (1970)

Table of Authorities

Other Authorities

Note: Juveniles in the Criminal Courts: A Substantive View of the Fitness Decision, 23 U.C.L.A. L.Rev. 988 (1976) .....

Note: Waiver of Juvenile Court Jurisdiction Under Iowa's New Juvenile Justice Act, 29 Drake L.Rev. 405 (1979) .....

Peel, The Nature of Adolescent Judgment (1971) ....

Piaget, The Moral Judgment of the Child (1932) .....

Platt, The Child Savers: The Invention of Delinquency (1969) .....

President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 41 (1967) 1

President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, 35 (1967) .....

Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime (1978) .....

Rest, Davison, and Robbins, Age Trends in Judging Moral Issues: A Review of Cross-Sectional Studies of the Defining Issues Test, 49 Child Development 263 (1978) .....

Rutter, Changing Youth in a Changing Society (1980)

Skolnik, The Limits of Childhood: Conceptions of Child Development and Social Context, 39 Law and Contemporary Problems, No. 3 (Summer 1975) .....

Vidmar and Ellsworth, Public Opinion and the Death Penalty, 26 Stan.L.Rev. 1245 (1974) .....

Vitiello, Constitutional Safeguards for Juvenile Transfer Procedure: The Ten Years Since Kent v. United States, 26 DePaul L.Rev. 23 (1976) .....

OTHER AUTHORITIES

Weissbrodt, U.S. Ratification of the Human
Covenant, 63 Minn.L.Rev. 35 (1978) .....
Wenk, Robison, and Smith, Can Violence be
dicted? 18 Crime and Delinquency 393 (1972
Wolfgang, Figlio, and Sellin, Delinquency in a
Cohort (1972) .....
Zimring, "Background Paper", in Report
Twentieth Century Fund Task Force on Sent
Policy Toward Young Offenders, Confronting
Crime (1978) .....

No. 80-5727

In the Supreme Cou

OF THE

United States

OCTOBER TERM, 1980

MONTY LEE EDDINGS,
Petitioner,

VS.

STATE OF OKLAHOMA,
Respondent.

**On Writ of Certiorari to the Court of Crimin
Of the State of Oklahoma**

**BRIEF OF NATIONAL COUNCIL ON CRIM
LINQUENCY, JUVENILE LAW SECTIO
NATIONAL LEGAL AID AND DEFENDE
ATION, AND AMERICAN ORTHOPS
ASSOCIATION AS AMICI CURIAE IN S
PETITIONER**

I

INTERESTS OF AMICI CUR

The National Council on Crime and Deli
is a non-profit corporation with a memb
6,300 citizens and officials. NCCD conduc
standards, and works with correctional a
professionals and citizens groups to imp
of the criminal and juvenile justice system
Aid and Defender Association (NLADA
organization whose primary purpose is to
ing effective legal services to persons unab
sel. *Amicus* NLADA Juvenile Law Section
NLADA which is concerned with the ri
American Orthopsychiatric Association
interdisciplinary organization of approxim
bers, including psychiatrists, psychologist
educators, and allied professionals con
problems, causes, and treatment of abn
including abnormal behavior of children

Amici bring to this case a well-documen
to improving the legal system's capacit
issues affecting children effectively, f
increased knowledge of children's develo
ties. All three *Amici* strongly oppose imp
punishment on children as inconsistent wi
standards of decency and humanity.[2]

---

[1]A more detailed description of each *Amicus*
forth in *Amici*'s Motion to File Brief *Amici C*
Petitioner which has been filed with the Court.

[2]This is not to imply that any *Amicus* support
as it is applied generally to adults. That issue
closed by this Court's decision in *Gregg v. Ge*
(1976).

II

THIS COURT HAS ALWAYS
SCOPE OF CONSTITUTIONAL
YOUTHS ON THE BASIS O
STATUS IN SOCIETY

This Court's recent analyses of w
alty constitutes cruel and unusual pu
increasingly upon the ability of the
the characteristics of the defendant
appropriateness of the punishment
vidual. *E.g., Furman v. Georgia,*
Woodson v. North Carolina, 42
Lockett v. Ohio, 438 U.S. 586 (1978)
that an attribute of the defendant's
important than the circumstances o
mining the cruel and unusual nature
Amici herein argue that the youth
attribute that always militates aga
the death penalty because of the hei
this Court has shown toward the
adolescents in society.[3] The con
against cruel and unusual punishm
greater protection for young peopl
to be consistent with this Court's
other settings wherein their con
implicated.

---

[3]"The Court long has recognized that
the law is unique in many respects. A
aptly put it, '[c]hildren have a very s
law should reflect'." *Bellotti v. Baird,*
(plurality opinion), *quoting May v. An*
(1953) (concurring opinion).

In analyzing the constitutional
those of adults, this Court has nev
the principle that both adults an
alike. Because youth lack the mat
experience of adults, merely exte
to youth could result in dispara
Baird, 443 U.S. 622 (1979) (plur
noted that the constitutional righ
could not be equated, in view of "
of children," and "their inability
in an informed, mature manner."
Court has not limited its view ab
to young children. "Most childr
simply are not able to make sou
many decisions . . ." *Parham v.*
(1979).[4]

---

[4]The Court has continually rejected
adolescents engage in adult activitie
fully the rights of adults. *See e.g., Pla*
v. Danforth, 428 U.S. 52 (1976); *Mi*
noma County, 49 U.S.L.W. 4273 (Ma
Baird, supra at 643-644, fn. 23, the Cou

> "Not only is it difficult to define,
> but the fact that a minor may be
> respects does not mean that hi
> growth under parental guidance

In distinguishing the rights of an ad
youth accused of criminal wrongdoing

> "[T]he greatest care must be tak
> admission was voluntary, in the
> coerced or suggested, but also th
> ignorance of rights or of adolesc
> *In re Gault*, 387 U.S. 1, 55 (1967)

This perception of youth
limit a minor's First Ame
access to reading materia
obscene for youth but not
York, 390 U.S. 629 (1968)];
minor's employment opportu
100 (1941); *Prince v. Con*
321 U.S. 158 (1944)]; and
rights that are exactly e
deciding to abort pregnan
H.L. v. Matheson, 49 U.S.
In the area of juvenile j
statutory schemes that fail
fundamental to criminal de
youth are better served by
immaturity and amenabilit
McKeiver v. Pennsylvania,
that runs throughout these
be able to exercise fully the
they avoid harm or gain son
ment phase of life. In the
execution of children simp
has been held constitutio
[*Gregg v. Georgia*, 428 U.S
undermine the well-establis
stitution specially protects
ability and immaturity.

Even in cases where the
stitutional rights of adults
applied the adult rule to the

the rights.[5] The series of
right of a young woman
revealing of the Court's t
cents. The Court has inva
either parents or a court
on the decision of a matu
an abortion. *Planned Par*
428 U.S. 52 (1976); *Bell*
sions are explicitly not p
young woman "who is o
activities is old enough to
Court was concerned tha
parental involvement or
failed to recognize the vu
influence and the "grave
minor is forced to have a

> "Indeed, considering
> ment skills, financial r

---

[5]The cases dealing with co
justice setting particularly de
juvenile delinquents with fun
the Constitution, this Court h
standard to determine wheth
the status of youth by furthe
Gault, 387 U.S. 1 (1967); *In*
observance of the standard
does not compel the State to
fits of the juvenile process];
[The imposition of double j
nile court by enabling youth
without fear that evidence c
Court has thus determined
constitutional rights on the b
the protections accorded juve

unwanted moth
some for a min

The Court has rece
statute is constituti
to those young wome
because they presu
with supportive pa
abortion decisions th
the State acts in wa
rights of youth it
minor's vulnerabilit

This Court has a
rights of youth whe
the state in the crim
youth have receive
guards than adults.
(plurality opinion),
was particularly su
tactics of the polic
could not "be judg
maturity." *Id.* at 59

"This is the per
of adolescence

Similarly, in *Galleg*
Court held that the
factor in determini
and thus obtained i
The Court suggeste
adult would be inef

because "[h]e ca
possession of his
quences of his ad

This Court has
of the death pena
of rehabilitation .
and "renunciation
of humanity" [*Fu*
(Stewart J. conc
the penalty of dea
The execution of
ment of societal
to compensate fo
and judgment. It
humanity's future
tential of today's

**THE DEATH PE
INHUMANE
LESCENT CH
EXPERIENCE
WHICH CHA**

Amici share th
adolescence is a d
Adolescents are

"'[T]he penalty
tence of imprisonm
more from life imp
from one of only a
U.S. 280, 305 (1976

are far mor
defiant cond
capacities f
control thei
should be b
do believe t
recognize th
adolescents

In 1967 a
ninety perce
one act for
juvenile co
ment and
Crime in a
hypothesis
particularly
Wolfgang,
hort (1972)
Justice, *Cri*
but, of equa

". . . m
young
turbule
in' tha
offende
whethe
tion p
most a
F. Zim
Twenti
Policy
Crime

Of course, many juveniles continue to engage in serious criminal activity after they become adults. *See, Delinquency in a Birth Cohort, supra.* However, the evidence does strongly suggest that a significant amount of youth crime is age-related, reflecting the impulsiveness, the defiance of authority, and the vulnerability to peer pressure which typify adolescence.

Childhood in this country has been extended by the decline of the working family as a unit of economic production. The prolongation of education, removal of children from the labor market by means of compulsory education and child labor laws, and the emergence of age-graded schools created a separate world of youth in which the "teenager" and youth culture appeared. A. Skolnik, *The Limits of Childhood: Conceptions of Child Development and Social Context,* 39 Law and Contemporary Problems, No. 3 at 38, 62-3 (Summer 1975). Adolescence is also a time when young persons are frequently struggling to arrive at a definition of their own identity; adolescents are particularly likely to rebel against adult authority and to seek affirmation by their peers. *See,* E. Erickson, *Childhood and Society,* 261-63 (2d Ed. 1963).

> "The American adolescent, struggling with the biological and psychological pressures of youth, seeks status and reassurance in the company of his peers. Rebellion against parental authority and restrictions is combined with pressure to conform to the expectations of other adolescents. The teen years are a period of experiment, risktaking, and bravado. Some criminal activity is part of the patterns of almost all youth subcultures." F. Zimring, *supra,* at 3.

By the time a child attains age fifteen or sixteen, he has generally achieved significant cognitive ability, and is able to deal with abstract concepts and ideals. J. Piaget, *The Moral Judgment of the Child* (1932). Nevertheless, a child's ability to think abstractly and to engage in mature judgment continue to develop further into late adolescence and early adulthood. *See,* M. Rutter, *Changing Youth in a Changing Society* 83 (1980); E. A. Peel, *The Nature of Adolescent Judgment* 131-134 (1971). Of particular significance is the considerable body of research which demonstrates that a person's ability to think in moral terms and to engage in moral judgments develops significantly during middle and late adolescence, reaching a plateau only after leaving school or reaching early adulthood. *See, e.g.,* J. Rest, M. Davison, and S. Robbins, *Age Trends in Judging Moral Issues: A Review of Cross-Sectional Studies of the Defining Issues Test,* 49 *Child Development* 263 (1978); L. Kohlberg, "Development of Moral Character and Moral Ideology", in Hoffman and Hoffman, *Review of Child Development Research* 404-05 (1964). The ability to make moral judgments depends, at least in part, on broader factors of social experience. Most adolescents simply do not have the breadth and depth of experience which are essential to making sound value judgments and to understanding the long-range consequences of their decisions. *See,* Kohlberg, *supra,* at 404-05; Rutter, *supra,* at 238; C. Lewis, *A Comparison of Minors' and Adults' Pregnancy Decisions,* Vol. 50, No. 3 Amer. J. of Orthopsychiatry 446 (1980) [minors making abortion decisions are less likely than adults to consider effects of having a child on the quality of their lives].

Recognizing that adolescence is a turbulent pathway o
the road to maturity, our system of juvenile justice—whil
holding minors responsible for their misconduct—has als
acknowledged that the level of juvenile responsibility i
lower than for adults. *See,* President's Commission on La
Enforcement and Administration of Justice, *Task Forc
Report: Juvenile Delinquency and Youth Crime* 41 (1967
[cited hereafter as *Task Force Report*]. Distress with th
retributive nature of the criminal justice system and lon
prison sentences given children led directly to the passag
of the first juvenile court act in Illinois in 1899, and to th
rapid spread of the juvenile court system to all state
except Maine and Wyoming during the next thirty-fiv
years. *See, In re Gault,* 387 U.S. 1, 14-15 (1967); Fo
Juvenile Justice Reform: An Historical Perspective, 2
Stan. L. Rev. 1187 (1970). The philosophical premise u
derlying the juvenile court system was that misbehavin
children, lacking maturity and an adult sense of respons
bility, ought to be helped—not punished. A. Platt, *Th
Child Savers: The Invention of Delinquency* (1969); *I
re Gault, supra,* at 16.

In addition to a humanitarian compassion for offende
who are children, the juvenile court system was predicate
on the belief that because of their youth and malleabilit
children are more likely subjects for successful interventio
than older and, presumably, more hardened offenders. *Tas
Force Report,* at 9; J. Mack, *The Juvenile Court,* 23 Har
L. Rev. 104, 119-20 (1909). Although acknowledging th
juvenile court's failures, this Court in *McKeiver v. Pen
sylvania,* 403 U.S. 528 (1971), attributed the system's de
ficiencies to inadequate resources, knowledge, and will (*I*

at 544), pointedly refusing to jettison the rehabilitat experiment,

> "'. . . both because it is civilized and because soc protection itself demands constant search for alt natives to the crude and limited experiment of condc nation and punishment.'" *Id.*, n. 6, 546, quoting fr *Task Force Report*, at 9.[7]

In *Haley v. Ohio*, 332 U.S. 596 (1948), this Court ap recognized,

> "Age 15 is a tender and difficult age for a boy of a race. He cannot be judged by the more exacting sta ards of maturity." *Id.* at 599.

More recently, a distinguished Task Force of juver justice experts[8] echoed this sentiment in finding th "[m]any forms of youth crime are a product of the spec pressures and vulnerability of adolescence." *Report of Twentieth Century Fund Task Force on Sentencing Pol Toward Young Offenders, Confronting Youth Crime* (1978). The Task Force concluded that although you

---

[7]Similar considerations led in 1950 to passage of the Fed Youth Corrections Act [18 U.S.C. § 5010 *et seq.*] under wh youths between the ages of 16 and 22 were made eligible for cial treatment. The Act was designed to provide a better met of treating young offenders in a "vulnerable age bracket," and rehabilitate them and restore normal behavior patterns." *szynski v. United States*, 418 U.S. 424, 433 (1973).

[8]The Task Force included such well-known juvenile justice sc ars and experts as Allan Breed, former director of the Califc Youth Authority; Franklin Zimring, director of the Center Studies in Criminal Justice, University of Chicago; Peter B. E man, New York State Commissioner of Youth Administration; tine Wise Polier, retired judge of the New York State Family C and Marvin E. Wolfgang, director of the Center for Studie Criminology, University of Pennsylvania.

offenders should be held legally responsible for int
criminal harms,

> ". . . they deserve less punishment because ad
> have less capacity to control their conduct and
> in long-range terms than adults . . . . Moreove
> crime . . . represents a failure of family, sch
> the social system, which share responsibility
> development of America's youth." *Id.*

The litany of articles, studies, reports, and bo
cussed herein attest to what *Amici* believe is an ine
conclusion: adolescents are developmentally distin
adults. While not devoid of judgment and contr
equally unrealistic to treat young offenders as if t
fully mature judgment and control." *Id.* The deve
of a rehabilitative model of juvenile justice in this
reflected an appreciation for adolescents' di
responsibility and culpability emanating from th
perience, impulsiveness, and lesser capabilities
range thinking and moral judgments. To execute a
even the most reprehensible conduct is inconsist
our knowledge of adolescent behavior and culpabi
ultimately, with a system of civilized and humane

IV

CERTIFICATION OF A MINOR FOR TRIAL IN COURT DOES NOT INDICATE THAT A MI MATURE, SOPHISTICATED, OR SHOU TREATED IN OTHER WAYS AS THOU WERE AN ADULT

A child does not cease to be a child simply beca
certified for trial in adult court. Under Oklahon

sixteen year-old child, like petitioner, who h
fied and tried in criminal court is still subj
abilities of minority. He cannot marry with
of a parent or guardian (43 Okl. St. Ann. §
vote (Okl. Const. Art. 3, § 1); he cannot p
(21 Okl. St. Ann. § 1215); he cannot consent
health professionals unless he is married,
services for dependent children (63 Okl. Stat.
he cannot donate blood without parental p
Okl. Stat. Ann. § 2512); and he may disaffirm
except for "necessaries" (15 Okl. Stat. Ann.

Since Oklahoma law continues to treat
almost all purposes as a child, it cannot p
maintained that his certification transforms h
child to adult. Certification altered the fo
petitioner was tried and the statutory pena
he was subject. However, as *Amici* will de
decision to certify petitioner for criminal pr
not tantamount to a determination that petit
ture, sophisticated, or "hardened."[9]

At the time that petitioner was certifie
trial, the Oklahoma certification statute enu

---

[9]Many state statutes authorize transfer of mi
than 16 years old to adult court for criminal prose
Ind. Code § 31-6-2-4(b)(c)(d) [ten year old min
murder may be waived to adult court]; 37 Ill. A
[age 13]; Miss. Code 1972 Ann. § 43-21-157 [ag
Law § 30.00 [age 13 for murder; age 14 for specifi
ies or attempted violent felonies].

criteria governing the certification decision
criteria relate to the seriousness of the offe
in which the offense was committed, and
merit of the complaint. The last criterio
likelihood of rehabilitating the offender an
public. Only guideline six concerns charac
of adults or adult behavior, namely the defe
tication" and "maturity". Under the then

---

[10] 10 Okl. Stat. Supp. 1976 § 1112(b) stated in
"If a child is charged with delinquency as a
which would be a felony if committed by a
shall consider the following guidelines:

1. The seriousness of the alleged offense
2. Whether the alleged offense was commi
sive, violent, premeditated or willful manne
3. Whether the offense was against per
greater weight being given to offenses aga
cially if personal injury resulted;
4. Whether there is prosecutive merit to the
5. The desirability of trial and disposition o
in one court when the juvenile's associat
offense are adults;
6. The sophistication and maturity of the
mined by consideration of his home, envir
emotional attitude and pattern of living;
7. The record and previous history of the
previous contacts with community agencies
agencies, schools, juvenile courts and other
periods of probation or prior commitment
tutions; and
8. The prospects for adequate protection
the likelihood of reasonable rehabilitation
he is found to be guilty of the alleged offe
procedures and facilities currently availab
court."

fication statute, it was permissible to
adult court, even if unsophisticated a
of the seriousness of the offense, the
the lack of adequate resources within
or because of a perceived need to inc
beyond his nineteenth birthday, whic
sible if he were sentenced in juvenil
Stat. Supp. 1977 § 1102(A).

The Oklahoma case law construing
1976 § 1112(b), and the predecessor C
statute, clearly demonstrate that em
and maturity have been rejected as
certifying a youth to adult court. In *S*
P.2d 598 (Okl. Crim. App. 1973), the

> "The contention that before there
> tification there must be a showing
> advanced emotional maturity an
> greater than his chronological ag
> out foundation in the provisions
> *Id.* at 601.[11]

The Court found that in order to cer
necessary under either the statute o
demonstrate that the juvenile ". . .
wrong as would a nineteen or twenty
Id. at 602.

---

[11]Although the certification statute in S
emotional maturity as a specific certi
believe it is significant that the Oklahoma
maturity or sophistication need not be s
the then applicable certification stand
capable of knowing right from wrong, a
able for his acts. *Id.* at 601.

In *Matter of Smith*, 548 P.2d 647
which involved the same statute un
certified to adult court, the court
of the juvenile is simply one consi
court's guidance. Certification may
ant's age, demeanor, background,
alleged criminal acts. *Id.* at 648. In
P.2d 273 (Okl. Crim. App. 1977)—
cal certification statute implicated
court relied on two factors in certi
minors to adult court: first, the
grams available to the juvenile co
present security problems and re
ment; and second, the lack of suffi
habilitation in a juvenile facility si
juvenile courts must be discharg
at 275.[12]

Of greatest significance, the Okl
Appeals specifically upheld the
based on his age and the unavaila
ment resources available to the C

---

[12] *Amici's* extensive experience with
has demonstrated that inadequate res
to effectuate rehabilitation are frequent
of minors for criminal prosecution. Se
A Rationale for the Abolition of the
Waive Jurisdiction, 7 Pepperdine 937,
Juvenile Court Jurisdiction Under Ic
Act, 29 Drake L. Rev. 405, 428-29 (1
Criminal Courts: A Substantive Vie
23 U.C.L.A L. Rev. 988, 1004, 1007-0

Matter of M.E., 584 P.2d 1340 court did not rule that petitio as a juvenile given adequate a ruling would have been con certification hearing. *Id.* at that the length of time which tutional care, and the unavail resources within the juvenile for a decision to certify a mi *Id.* at 13437.

Amici have previously argu child development demonstra cent children lack the maturi to engage in long-range think the impulse-control which ar Nothing in the record in this ing below, or in the Oklahon suggests that this conclusion The trial court's decision to prosecution was not based o mature, sophisticated, harde and resources—beyond the

---

[13]Point III, *supra*.

[14]To the contrary, the record "sane", petitioner was acutely parents' marriage; and that he the trigger, believing that he w father, who was a policeman. 1169-70 (Okl. Crim. App. 1980).

the juvenile court.[15] The cert
simply meant that the trial
could adequately rehabilitat
public with the resources an

Amici believe that imposi
children who are retained wit
would clearly be unconscion
premises underlying the fou
Execution of a 16 year old
considered any more appro
state juvenile justice system
ate facilities and treatment p
[*see, McKeiver v. Pennsylva*
to effectuate his rehabilitatio

EXECUTION OF CHILDRE
AND REJECTED BY M
WORLD

In deciding whether imp
constitutes "cruel and unu
meaning of the Eighth Am

---

[15]One study has found that ju
oners and are low rate recidi
Safeguards for Juvenile Transfe
Kent v. United States, 26 DePau
erally agreed that although ther
repeated delinquency and later
to predict accurately adult crir
juvenile delinquency. E. Wenk,
Violence be Predicted, 18 Crime

quently looked to his
mate of internationa
433 U.S. 584 (1977).
ern opinion in the W
that state-sanctioned
humane, and contrar
attitudes which the l
dren.

While executions c
mon law, public opp
penalty for persons
spread in England by
United States indica
and only one child yo
in this country, the
February, 1965 a G
percent of the person
for murder, only 23 p
years of age. Erskine
Pub. Opinion Q. 290
Public Opinion and
1245, 1250 (1974). S

---

[16]J. Laurence, *A His*

[17]W. Bowers, *Execut*
ages referred to are t
death; however, becaus
time when there was
review, defendants' ag
instances—vary apprec
offenses were committe

sition of the death p
Penal Code[19] and th
the Criminal Law,[2
punishment for chil

Executions of ch
throughout most of
President Carter s
Civil and Political
the Covenant abolis
18 years of age. The
fied by 73 nations.[21
of the American Co
of San Jose) also fo
on persons under 1
signed by twelve co
been ratified by Colu

---

[18]Cal. Pen. C. § 19
[under 18]; Nev. Rev.
Ann. 1974 630:1(v) [
Art. 18-14 (1980 Cum.
[under 19]; Tenn. Co
15 or under 18 wher
at least nine other sta
[Alaska, Hawaii, Id
Dakota, West Virginia

[19]ALI, Model Penal

[20]National Commis
Draft of the New Fed

[21]*See*, D. Weissbr
Covenant, 63 Minn. L
has not yet acted on

duras, and V
which have
countries ha
execution of

In his clo
Clarence Da

> "You m
> the neck
> turn yo
> making
> and dar
> which o
> *of the C*

Darrow's re
important
adolescent c
has rejected
America pu
rendered the
be "wanton"
Georgia, 40
Amici join i
ment of chi
our ". . .

---

[22]Amnesty

[23]*Id.*, Adde

[24]These in
Republic, Hu
dom of Gre
British Virgi
Guatemala, a

progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

CONCLUSION

For the above-stated reasons *Amici* urge this Court to reverse the judgment of the Court of Criminal Appeals of the State of Oklahoma insofar as it upheld the imposition of the death penalty on petitioner.

Dated: June 3, 1981

Respectfully submitted,

ROBERT L. WALKER
JAMES B. MORALES
Attorneys for Amici Curiae

Of Counsel:
MARILEE ALLAN